

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (SJ) NO.224 OF 1994

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AGAINST THE JUDGMENT OF CONVICTION AND THE ORDER OF
SENTENCE DATED 04TH JULY, 1994 PASSED BY SHRI JEEVAN
TIGGA, SPECIAL JUDGE, NALANDA AT BIHARSHARI IN
NOORSARAI POLICE STATION CSE NO. 209 OF 1989)

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SAHDEB PRASAD, SON OF LATE LUTAN SAO, RESIDENT OF
VILLAGE AND POLICE STATION NOORSARAI, DISTRICT NALANDA

.... APPELLANT/S

VERSUS

THE STATE OF BIHAR

.... RESPONDENT/S

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APPEARANCE :

FOR THE APPELLANT/S : MR. SHIV SHANKAR AZAD,
ADVOCATE

FOR THE RESPONDENT/S : MR. SUJIT KUMAR SINGH, A.P.P.

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CORAM: HONOURABLE JUSTICE SMT. SHEEMA ALI KHAN

ORAL JUDGMENT

Date: 03-08-2012

Sheema Ali Khan, J.

This appeal arises out of the judgment of conviction and the order of sentence dated 04th July, 1994 passed by the Special Judge, Nalanda at Biharsharif in Noorsarai Police Station Case No. 209 of 1989, by which the appellant has been convicted under Section 7 of the Essential Commodities Act and sentenced to undergo rigorous imprisonment for three months and also to pay a fine of Rs. 2,000/-, in default of which, he has to undergo rigorous imprisonment for one month.

2. The prosecution case, in brief, is that Sharwan Kumar, Officer-in-charge of the Noorsarai

Police Station raided the house of Sahdeo Prasad, the appellant, on the basis of a confidential information. On raid, he found that the appellant had concealed 16 bags of sugar. Sugar was seized and seizure list was prepared and handed over to the daughter of the appellant.

3. PW 5 Ashok Kumar is the formal witness and is the Pleader Clerk in the Bihar Sharif Civil Court. He has proved the formal First Information Report which has been marked as Exhibit-3.

4. The Investigating Officer Shrawan Paswan has been examined as PW 6. He has stated that he knew the appellant earlier to the occurrence as the appellant is a Teacher. A suggestion has been given to him that seized sugar belong to one Sunil Kumar, a Public Distribution System Dealer, and for some unknown reason, the appellant has been implicated in this case. There is nothing in his cross-examination to help the defence. He has tried to support the manner in which he has investigated the case. According to him, a lock was put in a room from where the sugar was recovered. He does not remember the house. He has stated that he did not meet the accused at the time when he was investigating the case. He denies the suggestion that no recovery was made from the house of the appellant.


5. PW 1 Narayan Sao is the seizure list witness. He admits his signature on the seizure list, but has stated that his signature was obtained on a blank paper. He also denies the fact that the seizure was made in his presence.

6. PW 4 Arbind Kumar Sinha has admitted his signature on the seizure list, but has stated in the cross-examination that he did not read the contents of the seizure list, which was prepared by the informant. He further states at paragraph 6 that he has put his signature on the seizure list in the Police Station. He further states that when he was putting his signature, the seized items were not at the Police Station.

7. The two seizure list witnesses in fact demolish the case of the prosecution that a seizure list was prepared at the house of the appellant. In fact, PW 4 goes so far, as to say, that he cannot identify Shima Ranjan, the daughter of the appellant, thereby creating a doubt regarding the manner in which the seizure list was prepared, as she had also signed on the seizure list.

8. PW 2 Biswanath was a Constable and he was part of the Raiding Party. He has supported the prosecution version.


9. Similarly, PW 3 Bindeshwar Paswan



was also a member of the Raiding Party. He has supported the prosecution version, but in his cross-examination, he has stated that he does not remember the manner and when the sugar was seized, he does not remember the manner in which sugar was carried to the Police Station and finally at paragraph 10, he has stated that he is being examined in this case for the first time before the Court, meaning thereby that his statement was not recorded by the Investigating Officer during investigation of this case.

10. The prosecution has not been able to examine the informant of this case.

11. On perusal of the evidence in this case, it appears that the prosecution has not been able to prove that sugar was recovered from the house of the appellant was meant to be sold in black-market. The appellant was neither examined by the Investigating Officer of this case nor were any steps being taken to trace the source from which the sugar had been received by the Police. The signature on the seizure list has been denied by the seizure list witness during their examination before the Trial Court. There is no material to show that the seizure list was received by the daughter of the appellant. In fact, the recipient at the relevant time was minor as she is said to be 12 years of



age, which would lead to a different connotation altogether and as such, this Court finds that there are several lacunae in the prosecution case and the evidence of the witnesses does not inspire confidence in the mind of this Court, as the case is basically based on the statement of the informant in the First Information Report, who has not been examined by the prosecution during the trial of this case.

12. Considering all aspects of the matter, this Court finds itself unable to uphold the judgment of conviction. Accordingly, the judgment of conviction and the order of sentence dated 04th July, 1994 passed in Noorsarai Police Station Case No. 205 of 1989 is set aside and the appellant is acquitted of the charges levelled against him. He is also discharged from the liabilities of the bail bonds furnished earlier in this case.

13. In the result, this appeal is allowed.

(Sheema Ali Khan, J)

Prabhakar Anand/-